

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
LEONARD D. WEISS	:	DETERMINATION
	:	DTA NO. 818446
for Redetermination of a Deficiency or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law for the Year 1994.	:	

Petitioner, Leonard D. Weiss, 2147 Seneca Drive N., Merrick, New York 11566, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law for the year 1994.

A small claims hearing was held before Arthur Johnson, Presiding Officer, at the offices of the Division of Tax Appeals, 175 Fulton Avenue, Hempstead, New York, on November 16, 2001 at 1:15 P.M. Petitioner appeared by Steven Godsberg, Esq. The Division of Taxation appeared by Barbara G. Billet, Esq. (Susan Parker).

ISSUES

I. Whether the Division of Taxation properly denied the refund claimed on petitioner's 1994 New York State income tax return on the basis that said claim was filed beyond the statute of limitations for refund.

II. If it is determined that petitioner's claim for refund was filed beyond the applicable statute of limitations for refund, whether the refund should nonetheless be granted on the principle of fairness.

FINDINGS OF FACT

1. On November 9, 1998, petitioner, Leonard D. Weiss, filed a joint New York State resident income tax return for the year 1994. The return indicated that his wife, Francine, had died on October 1, 1995. Said return reflected an overpayment of \$3,777.00 and petitioner requested the overpayment be refunded to him. Petitioner had obtained extensions of time to file the 1994 tax return until October 15, 1995.

2. On April 23, 1999, the Division of Taxation ("Division") issued a notice to petitioner disallowing in full the \$3,777.00 refund claimed on his 1994 New York State income tax return. The refund was denied for the following reason:

The Tax Law does not permit us to allow the refund or credit you claimed on your income tax return for the year(s) 1994. The deadline for filing for a refund or credit expired three years from the date the return was due.

3. Petitioner disagreed with the disallowance of his claim for refund, and after a conciliation conference with the Division's Bureau of Conciliation and Mediation Services failed to bring about a resolution of the controversy, this proceeding ensued.

4. During 1994, petitioner's wife was terminally ill with lung cancer and died as a result of the illness on October 1, 1995. He spent much of his time caring for his wife who was constantly in and out of the hospital.

Petitioner was employed by Cellular Telephone Enterprises and Beeper Paging, Inc. in 1994 and received wages from the two totaling \$62,400.00. Petitioner had been experiencing financial difficulties since 1991 which ultimately forced him into personal bankruptcy in 1995. Petitioner's personal and business records were subpoenaed by the trustee in bankruptcy in August 1995. Petitioner was unable to obtain copies of the records from the trustee until

sometime in 1998. At that time, he hired an accountant to prepare his income tax returns for the years 1994, 1995 and 1996 which he filed together on November 9, 1998.

SUMMARY OF THE PARTIES' POSITIONS

5. Petitioner does not dispute the fact that the 1994 income tax return was filed after the statute of limitations for refund had expired. However, he argued that his failure to file timely was attributable to the personal tragedies of dealing with the death of his wife and the bankruptcy, as well as the fact that the unavailability of records prevented him from preparing the return. Petitioner believes that the vision and mission of the Division is to administer the Tax Law in a fair manner and that the extenuating circumstances presented in this case allows the Division to grant his refund claim based to the principle of fairness.

6. The Division maintained that petitioner could have filed a protective claim within the three-year time limitation without having records and that he had alternative means available to obtain information on his wages and the amount of tax withheld.

CONCLUSIONS OF LAW

A. As applicable to the instant matter, Tax Law § 687(a) provides for the following limitations on credits or refunds of overpayments of income tax in New York: "Claim for credit or refund of an overpayment of income tax shall be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expires the later."

B. Tax Law § 687(e) provides:

No credit or refund shall be allowed or made . . . after the expiration of the applicable period of limitations specified in this article, unless a claim for credit or refund is filed by the taxpayer within such period. Any later credit shall be void and any later refund erroneous. No period of limitations specified in any other law shall apply to the recovery by a taxpayer of moneys paid in respect of taxes under this article.

C. Petitioner, having filed valid extensions, had until October 15, 1998 to file a claim for refund for the 1994 tax year. Petitioner filed his income tax return for 1994 on November 9, 1998 which was beyond the statute of limitations for refund. Therefore, the Division properly denied petitioner's claim for refund.

D. I sympathize with petitioner for the trying and difficult times he experienced through 1998. However, there is no provision in the Tax Law for waiving the three-year statute of limitations as it applies to requests for refunds or credits. Although this conclusion may appear harsh, it must be noted that the law affords a taxpayer a substantial time period, generally three years, to file a claim for credit or refund and unfortunately for petitioner, he failed to file his claim for 1994 within the time frame allowed by law. Conversely, the Division, once a return has been filed, generally has a like three-year period to issue a notice of deficiency to a taxpayer asserting that additional tax is due (Tax Law § 683[a]). Accordingly, I see no inequity in the current statutory scheme which holds a taxpayer to the same three-year period to file a claim for credit or refund.

E. The petition of Leonard D. Weiss is denied and the Division's notice denying the claim for refund issued April 23, 1999 is sustained.

DATED: Troy, New York
February 14, 2002

/s/ Arthur Johnson
PRESIDING OFFICER